

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2851.01 *et seq.* (2001), Section 2 of the Towing Regulation and Enforcement Authority Emergency Act of 2003, effective November 13, 2003 (D.C. Official Code § 47-2850 (2004 Supp.)), and Mayor's Order 2003-78, dated June 26, 2003, hereby gives notice of the adoption of the following amendments to Chapter 4 of Title 16 of the District of Columbia Municipal Regulations (DCMR), Towing Service for Motor Vehicles, which were published as final rules on May 23, 2003 (50 DCR 3935).

Proposed rulemaking that was published in the *D.C. Register* on December 5, 2003 (50 DCR 10405) was superceded by proposed rulemaking that was published in the *D.C. Register* on February 13, 2004 (51 DCR 1700). No comments were received on the February 13, 2004 publication of the proposed rulemaking that was approved by the Council of the District of Columbia on February 3, 2004. Accordingly, these rules shall become effective on the date of publication of this notice in the *D.C. Register*.

The following sections of Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions) (July 1998), Chapter 4 are amended to read as follows:

402 LICENSES REQUIRED FOR TOWING BUSINESSES AND TOWING SERVICE STORAGE LOTS

- 402.1 No person or entity may own or operate a towing business without having first obtained a Basic Business License and a Basic Business License Endorsement for a Towing Business as required by D.C. Official Code § 47-2851.01 *et seq.* (2001).
- 402.2 No person or entity may own or operate a towing service storage lot without having first obtained a Basic Business License and a Basic Business License Endorsement for a Towing Service Storage Lot as required by D.C. Official Code § 47-2851.01 *et seq.* (2001).
- 402.3 Each person or entity making application for a Basic Business License Endorsement for a Towing Business shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:
- (a) The trade name, primary location of business, and primary phone number of the towing business;
 - (b) A list of all other locations from which the towing business will operate, and the phone numbers for such locations;
 - (c) The name, address, and telephone number of each person or entity with an ownership interest in the towing business or towing service storage lot;

- (d) The primary storage location, year, make, model, Vehicle Identification Number (VIN), and license plate number of each tow truck that will be used by the towing business;
- (e) A list which includes the name, address, date of birth, driver's license number, and Social Security number of all tow truck operators, employees, agents and contractors who will be involved in the towing business;
- (f) The location and description of the towing service storage lot to be used for the storage of towed vehicles, together with a copy of a deed, lease, contract, or other proof of the right to use the space as a vehicle storage lot, a copy of the Site Plan or D.C. Surveyor's Plat and a copy of a valid Certificate of Occupancy permit for that use and location;
- (g) Proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00 that remains in effect or is renewable for the duration of the license period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written;
- (h) A surety bond in the minimum amount of \$25,000.00;
- (i) Two copies of the billing form that the towing business proposes to use, which reflects current rates for private tows and storage services, trade name(s), business address(es) and business telephone number(s);
- (j) A completed Basic Business License application;
- (k) A Certificate of Occupancy for the location of the business, if the business is not located on the same premises as the towing service storage lot;
- (l) A Clean Hands Before Receiving License or Permit Act of 1996 certification form as required by D.C. Official Code § 47-2861 *et seq.* (2001);
- (m) Certification that the business is registered with the Office of Tax and Revenue.

402.4

Each person or entity making application for a Basic Business License Endorsement for a Towing Service Storage Lot shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:

- (a) The trade name, primary location of business, and primary phone number of the towing service storage lot;

- (b) A list of all other locations from which the towing service storage lot owner/operator will operate, and the phone numbers for such locations;

- (e) Proof of a current Garage Keeper's Legal Liability Insurance Policy of at least \$50,000.00, which remains in effect or is renewable for the duration of the license period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written; and

402.5 The Basic Business License, the Basic Business License Endorsement for a Towing Business, and the Basic Business License Endorsement for a Towing Service Storage Lot shall be valid for two (2) years from the date of issue, unless earlier revoked or voluntarily relinquished, as provided by D.C. Official Code § 47-2851.09 (2001).

402.6 Deleted.

403 TOW TRUCK LICENSES

403.1 No person may operate or use any tow truck in a towing business unless such tow truck has been identified in the application (or amended application) for the Basic Business License Endorsement for such towing business, and unless the Director has inspected, approved, and authorized issuance of a DCRA unique alphanumeric identifier for such tow truck.

404 REQUIRED TOW TRUCK EQUIPMENT AND MARKINGS

404.10 All tow trucks shall have the following equipment, in good working order:

- (g) A set of tools which includes a set of screwdrivers, a wrecking bar, a working flashlight, a set of lug wrenches, a jack, jumper cables, and a first-aid kit.

405 TOWING STORAGE LOT REQUIREMENTS

- 405.1 A towing storage lot shall be located on a secured lot in the District of Columbia, with appropriate and descriptive signage, and be in full compliance with all District of Columbia laws and regulations, including zoning regulations.

- 405.3 Prior to releasing a public tow vehicle, the operator of a storage lot shall contact the DPW Towing Control Center by telephone and report the date and time of the scheduled release, the condition of the vehicle and to whom the vehicle is to be released.
- 405.4 The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall apportion the lot into storage lot sections and clearly identify or designate the towing business responsible for each apportioned section.
- 405.5 When a towing service storage lot is used by more than one towing business, the holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall clearly designate individual storage spaces for each vehicle and shall clearly identify the towing business assigned to each space.
- 405.6 The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall employ reasonable procedures and requirements to insure that vehicles are released to rightful owners or other authorized individuals.
- 405.7 A printed "Owner's Bill of Rights for Towed Vehicles" statement, issued by the Director, shall be given to the vehicle owner or operator by the tow truck operator before initiating the tow, if either the vehicle owner or operator is on the scene of the tow. The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall conspicuously post, at each towing service storage lot, the Owner's Bill of Rights for Towed Vehicles statement and, upon release of the vehicle, shall provide a copy of this statement to the person to whom the vehicle is released.

406 PUBLIC TOWS

- 406.8 Any loss or damage sustained by a vehicle as the result of a public tow by a towing business shall be the sole and entire responsibility of the towing business and not the Government of the District of Columbia, any department or agency thereof, or any government official who requested the tow. The towing business shall assume all liability for the vehicle and the property inside the vehicle, from the point of hook-up until the vehicle is released to its owner or authorized representative. The towing business shall take all precautions necessary to protect persons or property against injury or damage, and shall provide personnel sufficiently trained and capable to perform tows in accordance with the vehicle manufacturer's directions for towing a particular vehicle.

- 406.9 When an authorized government official directs the towing of a vehicle to a towing service storage lot, the government shall notify the vehicle owner of record in accordance with DPW procedures, of the tow and storage, the storage location of the vehicle, and all other information required to be given under applicable District law.

408 PAYMENT FOR SERVICES

- 408.1 The maximum rates that may be charged for all public tows initiated within the District of Columbia, and for all other services, including vehicle storage charges, related to public tows shall be as follows:
- (a) \$50 for providing Road Service for all vehicles, including all services provided to restore and or maintain operation of a vehicle, including services such as repairing tires, recharging batteries, and delivering gasoline;
 - (b) For Standard Towing Services, which apply to any passenger vehicle or any other vehicle with a Gross Vehicle Weight of 8,000 pounds, or less:
 - (1) \$100.00 for Preparation, hoist and tow to location within the District (Roll-back or wheel lift – use of dollies included);
 - (2) \$3.00 for Towing charge per mile for each mile beyond the District line (at owner's request); and
 - (3) \$20.00 for Storage, per 24-hour period, or part thereof.
 - (c) For Heavy-Duty Towing, which applies to any vehicle with a Gross Vehicle Weight over 8,000 pounds:
 - (1) \$275.00 for Preparation, Hoist, and tow to a location beyond the District line (Rollback or wheel lift – use of dollies included);
 - (b) \$6.00 for Towing charge per mile beyond the District line (at owner's request); and
 - (2) \$20.00 for Storage per 24-hour period, or part thereof.
 - (d) \$50.00 for Discontinuance Fee ("Drop Fee") that is charged when the Operator of a vehicle that is to be towed asks that the tow be discontinued and the police officer or other official who requested the tow agrees to discontinue the tow, in accordance with 16 DCMR § 408.6.
- 408.2 No rates charged by a towing business for private tows may exceed the rates set forth in the towing business's Basic Business License Endorsement application (including amendments thereto).

- 408.3 The holder of a Basic Business License for a Towing Business may collect extra charges on-site for the use of cranes, winches, dollies, or other equipment or services to perform a public tow under extraordinary circumstances or for the restoration or cleaning of an accident site. Within 72 hours after collecting extra charges, the towing business must submit documentary evidence of the extraordinary circumstances to the Director along with a written request for approval of the charges. The Director shall provide a written response within 14 calendar days of receipt of the request for approval. If the Director does not approve extra charges, the licensee of a towing business must provide a refund to the customer in the amount of the disapproved charges within 72 hours of receipt of the Director's notice of disapproval.
- 408.4 Storage charges may accrue for any day that the facility is closed to the public so long as the facility is open for the reclaiming of vehicles for at least ten (10) hours per day, Monday through Friday, during normal business hours, and for at least five (5) hours a day, during normal business hours, on either Saturday or Sunday.
- 408.5 If a tow truck responds to a dispatch, and the police officer or other official who requested the public tow determines that services are no longer required, no charge shall be made by the towing business or service, except as may be authorized by a contract with a government agency. If a towing control number has been issued, the towing business shall notify the DPW Towing Control Center by telephone.
- 408.6 If a tow truck has applied chains, a dolly, a winch, or other towing device to prepare a vehicle for public tow, and the owner or operator of the vehicle appears and asks that the tow be discontinued, upon concurrence by the police officer or other official who requested the tow, (if present), the tow truck operator shall comply, upon payment by the vehicle owner or operator of the rates established for a discontinued public tow. If a towing control number has been issued, the towing business shall promptly notify the DPW Towing Control Center by telephone.
- ***
- 408.8 Towing businesses and towing services storage lots shall accept as payment for public towing and storage charges, cash, insurance draft, certified check, bank check, money order, and at least two (2) of the most widely-used, nationally recognized credit cards.
- 408.9 The owner or operator of the towing service storage lot shall provide to the person to whom the vehicle is released the following:
- (a) The towing control number;
 - (b) The Notice of Infraction, or other legal authority for removal of the car;
 - (c) An itemized statement of the charges due;

- 408.3 The holder of a Basic Business License for a Towing Business may collect extra charges on-site for the use of cranes, winches, dollies, or other equipment or services to perform a public tow under extraordinary circumstances or for the restoration or cleaning of an accident site. Within 72 hours after collecting extra charges, the towing business must submit documentary evidence of the extraordinary circumstances to the Director along with a written request for approval of the charges. The Director shall provide a written response within 14 calendar days of receipt of the request for approval. If the Director does not approve extra charges, the licensee of a towing business must provide a refund to the customer in the amount of the disapproved charges within 72 hours of receipt of the Director's notice of disapproval.
- 408.4 Storage charges may accrue for any day that the facility is closed to the public so long as the facility is open for the reclaiming of vehicles for at least ten (10) hours per day, Monday through Friday, during normal business hours, and for at least five (5) hours a day, during normal business hours, on either Saturday or Sunday.
- 408.5 If a tow truck responds to a dispatch, and the police officer or other official who requested the public tow determines that services are no longer required, no charge shall be made by the towing business or service, except as may be authorized by a contract with a government agency. If a towing control number has been issued, the towing business shall notify the DPW Towing Control Center by telephone.
- 408.6 If a tow truck has applied chains, a dolly, a winch, or other towing device to prepare a vehicle for public tow, and the owner or operator of the vehicle appears and asks that the tow be discontinued, upon concurrence by the police officer or other official who requested the tow, (if present), the tow truck operator shall comply, upon payment by the vehicle owner or operator of the rates established for a discontinued public tow. If a towing control number has been issued, the towing business shall promptly notify the DPW Towing Control Center by telephone.
- ***
- 408.8 Towing businesses and towing services storage lots shall accept as payment for public towing and storage charges, cash, insurance draft, certified check, bank check, money order, and at least two (2) of the most widely-used, nationally recognized credit cards.
- 408.9 The owner or operator of the towing service storage lot shall provide to the person to whom the vehicle is released the following:
- (a) The towing control number;
 - (b) The Notice of Infraction, or other legal authority for removal of the car;
 - (c) An itemized statement of the charges due;

- (d) A receipt for all monies paid; and
- (e) A copy of the Owner's Bill of Rights for Towed Vehicles.

- 408.12 Not less than one year after publication of this final rulemaking, the schedule of maximum rates will be reviewed upon written request, which includes a cost justification, for consideration by the Director. Subsequent written requests for review of the schedule of maximum rates will be considered not less than 24 months after a prior rate review.
- 408.13 After considering a request for review of the schedule of maximum rates, the Director, in consultation with the DPW Director, shall determine if the schedule of maximum rates should be changed.

409 ITEMIZED STATEMENTS AND RECEIPTS

- 409.6 The owner of a towed vehicle shall be responsible for paying all charges for a public tow, and all related towing services charges, in an amount not to exceed the charges authorized by the Director pursuant to § 408.1.
- 409.7 Payment of all lawful towing and storage charges shall be made by the owner of the vehicle, an agent of the owner, or the insurer of the vehicle before the vehicle is released by the towing business, the tow truck operator, or towing service storage lot operator.

410 PROHIBITED ACTS

- 410.13 Prior to payment of fees and release of a vehicle, no towing service provider may refuse the right of physical inspection of the towed vehicle when requested by the owner, an authorized agent of the owner, the lien holder, or the insurer of the vehicle.

- 410.17 It shall be unlawful for any tow truck operator to tow any type of vehicle in a manner that is not in accordance with the vehicle manufacturer's instructions for the vehicle. In addition, it shall be unlawful for any tow company to utilize any tow truck or equipment in a manner that is not in accordance with the tow crane manufacturer's instructions for towing vehicles.
- 410.18 It shall be unlawful for any towing business or tow truck operator to tow vehicles in the District of Columbia without current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00.

- 410.19 It shall be unlawful for any towing business to refuse to provide a refund to customers within 72 hours of receipt of the Director's notice of disapproval, when charges described in § 408.3 are not approved by the Director.

411 PENALTIES AND ENFORCEMENT

- 411.10 The Tow truck operator shall report the presence and the location of debris believed to contain hazardous materials to the DPW Towing Control Center by telephone. Failure to do so shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.11 Upon the request of any District government official, a towing business or a tow truck operator shall provide documentary proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00. Failure to do so shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.12 Failure to provide a refund as described in § 410.19 shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.13 If the person or entity licensed under § 402.3 is unable to use the towing storage lot identified in § 402.3(f) for any reason during the license period, then:
- (a) The licensee shall report this fact in writing to the Director at least ten (10) calendar days prior to the day when the towing service storage lot will become unavailable;
 - (b) The Basic Business License Endorsement for a Towing Business shall be automatically suspended by operation of law during the period that the towing service storage lot is unavailable for use by the licensee; and
 - (c) The Basic Business License Endorsement for a Towing Business may be reactivated without charge for the remainder of the license period when written evidence of the availability of a substitute towing service storage lot is supplied to the Director by the licensee and verified by the Director, or his designee.
- 411.14 Instead of any criminal sanctions authorized by law, civil fines and penalties may be imposed as alternative sanctions for any infraction of these regulations.

- 411.15 Adjudication of any civil infraction shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, (D.C. Official Code § 2-1801.01 *et seq.* (2001)).

499 DEFINITIONS

Section 499 is amended by deleting the definitions for 'Master Business License', 'Master Business License Endorsement for a Towing Business', and 'Master Business License Endorsement for a Towing Service Storage Lot', and by adding the following definitions:

Basic Business License – the single document designed for public display issued by the business license center that certifies District agency license approval and incorporates the endorsements for individual licenses included in the Basic Business License system.

Basic Business License Endorsement for a Towing Business – the individual license endorsement required for the conducting of a towing business in the District of Columbia.

Basic Business License Endorsement for a Towing Service Storage Lot - the individual license endorsement required for the maintenance of a towing service storage lot in the District of Columbia.

Extraordinary Circumstances – Conditions or events that are beyond what is usual, regular, or customary and which require special towing functions or services to commence or complete a tow.

Normal Business Hours – The hours of 8:00 a.m. through 6:00 p.m.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of section 3(b) and section 5(3)(D) of Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137, D.C. Official Code § 50-921.01 (2003 Supp.)) Mayor's Order 2002-102 (June 12, 2002); and Mayor's Order 2003-59 (May 16, 2003), hereby gives notice of the following amendment to chapter 24 of Title 18 DCMR, "Vehicle and Traffic Regulations". The new subsections regulate permit parking privileges granted to Advisory Neighborhood Commissioners pursuant to D.C. Official Code § 1-309.12(3)(D)(2001).

The Final Rulemaking will take effect upon the publication of Notice of Final Rulemaking in the D.C. Register. Proposed Rulemaking on this subject was published in the D.C. Register on February 20, 2004 (51 DCR 2002)

Title 18 DCMR is amended by adding two new subsections § 2420.3 through 2420.8 to read as follows:

- 2420.3 An Advisory Neighborhood Commissioner while on official business and occupying a vehicle displaying an ANC parking placard distributed pursuant to D.C. Official Code § 1-309.12 may park the vehicle at any:
- (a) Parking meter without the requirement of payment of meter fees under 18 DCMR 2404.06;
 - (b) Timed-limit curbside space including Residential Permit Parking areas; or
 - (c) Official government reserved parking space.
- 2420.4 Nothing in § 2420.3 shall be construed as authorizing Advisory Neighborhood Commissioners to park a motor vehicle in any place where or during any times when the stopping, standing, or parking of motor vehicles is prohibited or set aside for specified types of vehicles, nor exempt the holder from the observance of any traffic regulation other than those mentioned in 2420.3.
- 2420.5 Any person who willfully and falsely commits any of the following acts shall be considered in violation of this chapter:

(a) Utilizes an ANC placard or license plate not issued to that person to obtain the special parking privileges enumerated in this chapter; or

(b) Allows a non-ANC Commissioner to use his or her placard or license plate to obtain parking privileges when the ANC Commissioner is not in the motor vehicle; or

(c) Utilizes an ANC parking placard or license plate for special parking privileges while not on official business.

2420.6 The Director is authorized to revoke the ANC parking privileges of any individual found to be in violation of this chapter. Upon written notification of the revocation the individual shall surrender the placard to the Director.

2420.7 Failure to surrender a revoked parking placard shall constitute a violation of this chapter.

2420.8 An ANC parking placard shall be issued upon request of an Advisory Neighborhood Commissioner and shall be valid for a period of two years or until the Commissioner's term ends, whichever is the first to occur, and may be renewed for a similar period for so long as the Commissioner remains in office.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 02-42

Z.C. Case No. 02-42

(Text Amendments – 11 DCMR)

(Waterfront Open Space Recreation Zone district)

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Code, 2001 Ed. §§ 6-641.03 and 6-641.07); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Home Rule Act, hereby gives notice of the adoption of the following amendments to Chapters 1 (Zoning Regulations), 9 (Waterfront Districts), 20 (Non-conforming Uses and Structures), 21 (Off-Street Parking Requirements), 24 (Planned Unit Development Procedures), 25 (Miscellaneous Zoning Requirements), 31 (Board of Zoning Adjustment Rules of Practice and Procedure), and 32 (Administration and Enforcement) of the Zoning Regulations (11 DCMR), to establish the text for a new W-0 (Waterfront Open Space Recreation) Zone District.

A notice of proposed rulemaking was published on September 19, 2003 at 50 DCR 7838. Comments were received from the National Capital Planning Commission, the Capital Yacht Club, and one individual. In addition, the Office of Planning submitted a supplemental report recommending that the Commission not include in the final rule the proposed substantive amendments to the provisions of the CR, W-1, W-2, and W-3 Zone Districts. At final action, the Commission accepted OP's recommendations. The final rule, therefore, does not include the amendments to Chapter 6 (CR District); Chapter 9, § 901.1 (W-1, W-2, and W-3 Permitted Uses), §§ 901.1(m), (v), and (w); and Chapter 21 (Off-Street Parking Requirements) §2101.1, Schedule of Required Parking Spaces and §2119, Bicycle Parking Spaces requirements for the W-1, W-2, and W-3 zones that were included in the Notice of Proposed Rulemaking.

The Commission took final action to adopt the amendments at a public meeting held on December 8, 2003.

This final rulemaking is effective upon publication in the *D.C. Register*.

Authority of the Zoning Commission

Because these rules will govern uses that may extend over or float on water, the Commission believes it appropriate to address the issue of its authority to promulgate such rules. Section 1 of the 1938 Zoning Enabling Act, 52 Stat. 797 (1938), D.C. Official Code § 6-641.01, from which the Zoning Commission derives its powers, gives the Commission plenary zoning authority to regulate "buildings," "structures," and "land" within the District of Columbia. The term "land" as used in a zoning context, is construed to include submerged lands. *See, e.g., Harbor Island Marina v. Bd. County Comm'rs. Of Calvert County, Md.*, 407 A.2d 738 (Md. 1979); 3 Rathkopf, *The Law of Zoning and Planning*, § 35:5 (2001). In *Harbor Island*, the court, construing a zoning ordinance with language similar to the 1938 Act, rejected a narrow interpretation of the word "land" as encompassing solely "dry, solid earth." The court held that "land" included submerged lands and that a narrower reading hampered the remedial purposes for which zoning statutes exist. There is no reason to read out submerged lands from the 1938 Act, and good reason to read them in, in order to effectuate the purposes of zoning -- the promotion of the general welfare and the protection of natural resources.

Structures built out over the water are also subject to the authority of the Zoning Commission. Land, in a legal sense, is a "bundle" of rights, which accrue to the owner or user of the land. Riparian owners have certain rights to access and use the waters adjacent to their land, including the right to "wharf out," i.e., to construct improvements onto and over the water. *See, e.g., People's Counsel for Baltimore County v. Maryland Marine Mfg., Co., Inc.*, 560 A.2d 32 (Md. 1989). Traditionally, improvements made and attached to riparian land are considered additions to the land and are, therefore, subject to the local zoning power. *See, e.g., Holiday Point Marina Partners v. Anne Arundel County*, 707 A.2d 829 (Md. 1998). Indeed, there is no reason to treat a riparian owner's ability to build improvements over the water differently from the other privileges of property ownership that are subject to zoning restrictions. *See, e.g., Shorehaven Golf Club, Inc. v. Water Resources Comm'n.*, 153 A.2d 444 (Conn. 1959). The zoning regulations already recognize this. Section 107.6 states that, in tidal water areas, "the zone district boundary shall be either the mean high water level or the established pierhead lines, whichever gives the greatest control." 11 DCMR § 107.6. Therefore, any structure or use within the pierhead lines or any structure or use attached to the land, would fall under the jurisdiction of the Zoning Commission.

Set Down Proceeding

The Commission initiated this rulemaking in response to a petition from the District of Columbia Office of Planning, which recommended that a new low-density, low-intensity zone permitting open space and waterfront-enhancing uses be created. The petition resulted from recent waterfront-related planning initiatives, principally the Anacostia Waterfront Initiative, a joint District/federal initiative to improve the character, use, and environment of the waterfront throughout the District. Major themes of the study include:

1. A Clean and Active River;
2. Eliminating Barriers and Gaining Access;
3. A Great Urban Riverfront Park System;

4. Cultural Destinations of Distinct Character; and
5. Building Strong Waterfront Neighborhoods.

The proposed W-0 Zone District would be a new Waterfront Zone District, useful in establishing appropriate uses along the Anacostia and Potomac Rivers, would add stability and predictability to long-term decision-making, and would help facilitate the major themes of the Anacostia Waterfront Initiative.

At its October 28, 2002 regular meeting, the Commission agreed to set down the proposed rulemaking down for a public hearing. A Notice of Public Hearing was published on December 6, 2002 at 49 DCR 11035, for a Public Hearing to be held on January 23, 2003. However, due to an error in the Notice, the public hearing was postponed. A revised and corrected Notice of Public Hearing was published on January 24, 2003 at 50 DCR 746, for a public hearing to be held on March 13, 2003.

Description of Text Amendment

The importance of the Anacostia and Potomac Rivers to the overall urban fabric of the District is being rediscovered and reemphasized. The Anacostia Waterfront Initiative envisions a clean and vibrant waterfront with parks, recreation uses and places for people to meet, relax, encounter nature, and experience the heritage of the waterfront, as well as the revitalization of surrounding neighborhoods, the creation of new waterfront neighborhoods, and improvements to water quality and the riparian environment. A number of planning initiatives for waterfront areas are underway, such as the Southwest Waterfront and Near Southeast Plans, the Capitol Gateway Overlay District, and the South Capitol Street Study. In addition, there are development proposals for key sections of the waterfront, such as the Southeast Federal Center site and Reservation 13. While the existing Waterfront Zones (W-1, W-2, and W-3) will remain appropriate designations for some areas and some forms of development, they permit many forms of development, including uses that neither require nor enhance the waterfront at densities and heights that would be greater than that envisioned for portions of the river's edge.

In response to these changing conditions along the rivers' edge, the Office of Planning recommended the creation of a new W-0 (Waterfront Open Space Recreation) Zone District intended to provide valuable zoning flexibility along the waterfront. The W-0 Zone would:

- provide a low-density alternative to existing waterfront zones;
- permit most open space and recreation uses as a matter-of-right, including parks, playgrounds, pedestrian and bicycle trails, community gardens, temporary markets for produce, arts and crafts, temporary boat construction, and nature interpretative centers;
- permit by special exception other retail, cultural, and recreational uses for which direct access to the river is necessary, or that serve to activate the water surface;
- provide by special exception for the review of the appropriateness of certain uses and developments to their sites and whether they are designed and sited to augment the natural environment and the waterfront experience;

- seek to minimize negative environmental, physical, and visual impacts of development along the rivers' edge; and
- include regulations pertaining to the size and siting of structures.

Relationship to the Comprehensive Plan

Most of the riverfront is currently designated "Parks, Recreation and Open Space" on the Comprehensive Plan Generalized Land Use Map, the dominant uses being "parks and recreation centers, cemeteries, and the National Capital Open Space System." If, in the future, some of these areas are proposed to be zoned or rezoned, the proposed W-0 Zone is in keeping with that designation.

Along many areas adjacent to the rivers, the Comprehensive Plan envisions the retention or restoration of the natural environment. In other areas, the Plan foresees development which ensures the preservation and enhancement of public open space recreation for use by all District residents, and which compliments and enhances adjacent urban development and the quality of the rivers. The proposed new W-0 zone supports this vision as well as a number of Comprehensive Plan objectives and proposed actions for the District related to Land Use and Urban Design (§§ 700, 1406, 1732), Waterfront Development and Design (§§ 706, 1347), and Environmental Protection (§§ 1308, 1810).

Public Hearing

The Commission held a public hearing on this case on March 13, 2003. Commission members present were Chairman Carol J. Mitten, Vice Chairman Anthony J. Hood, and Commissioners James Hannahan, Peter May, and John Parsons.

In its testimony, the Office of Planning outlined the intent of the new W-0 zone district, to create a new, low-density alternative for lands along the waterfront.

In response to comments made by the Zoning Commission at the October 28, 2002 set down meeting, and comments made by affected ANC's, other District government departments, and members of the public, the Office of Planning proposed a number of modifications to the draft as presented to the Zoning Commission in concept form at the set-down meeting and advertised for public hearing. They included:

- minor amendments to add clarity to or clearly differentiate the W-0 zone district regulations from those of the remainder of the Waterfront zone districts;
- replacing the term "houseboat" with "floating home" and providing a revised definition;
- adding a statement of intent for the W-0 zone district;
- amending permitted uses and uses permitted by special exception;
- adding special exception review considerations and application requirements to assess emergency access and impacts on surrounding public lands, on the shoreline, and on the river;

- removing a number of previously proposed regulations pertaining to the management or servicing of a houseboat/marina/boathouse;
- increasing the recommended limit on the percentage of floating homes within a marina;
- adding special exception approval of accessory parking spaces for buildings, structures, and uses within the W-0 zone district;
- removing the previously recommended limit on the proportion of site that can be covered with any impervious surface;
- removing separate W-0 court requirements;
- simplifying the parking ratio for boathouses to one (1) space for every 2,000 sq.ft. of building area, providing for off-site parking for marinas, boathouses, and yacht clubs, and providing for a reduction or elimination of parking requirements for a boathouse by special exception;
- establishing bicycle parking space requirements for marinas and boathouses;
- amending loading berth and service/delivery loading space requirements for large retail, service, or cultural buildings used for public assembly; and
- clarifying that Planned Unit Development (PUD) standards for height and FAR limits are equal to those of the base W-0 District.

No other District government department or agency testified before the Commission. The report from the Office of Planning included comments from the Department of Consumer and Regulatory Affairs, Department of Public Works, District of Columbia Department of Transportation, Fire and Emergency Medical Services Department, Metropolitan Police Department, and the Water and Sewer Agency, indicating support for, or no concerns regarding, the proposal text. The Office of Planning report also included comments from the Chief of the Bureau of Environmental Quality, Department of Health, noting comments and suggestions that had either been incorporated into the proposed W-0 text by the Office of Planning, or which were considered outside the scope of the zoning regulations.

The National Park Service (NPS), which manages about twenty (20) miles of parkland along the Anacostia and Potomac Rivers, testified in support of the W-0 initiative. The NPS noted concern related to the potential impact on parkland of vehicular parking that would be required for boathouses, and stated that the proposed waterfront setback of twenty (20) feet should be increased.

Advisory Neighborhood Commission (ANC) 6-D, which includes waterfront land in the Southwest and Near Southeast areas of the District, noted qualified support for the concept of a W-0 zone in its submission to and testimony before the Zoning Commission, but recommended rejection of the proposal as drafted, due to concerns related to:

- the possible application of the W-0 zone to existing private lands and businesses, (this concern resulting from an error in the original and subsequent notifications which mistakenly indicated that the zone would be applied to specific lands as part of this application);

- special exception provisions that the ANC felt would increase the authority of Office of Planning at the expense of ANC's;
- the establishment of a limit on the percentage of floating homes within a marina; and
- a restriction on transient moorage spaces within a yacht club.

No other ANC provided written comments or testimony regarding this proposal.

The applicants for Zoning Commission Case Nos. 02-30 and 02-31, the Georgetown University Boathouse on the Potomac River, testified in support of the proposal and noted the conflict between the need for boathouses to be as close to the river as possible and the proposed waterfront setback, particularly given the shallowness of many waterfront sites, and suggested additional flexibility be given in the review of applications.

The D.C. Chapter of the Sierra Club testified in support of the proposal but recommended that that the W-0 Zone should not be applied to currently undeveloped areas. They suggested that the new zone district should include regulations that specifically require new development to use best practices to prevent runoff and pollution.

The National Resources Defense Council testified in support, and recommended the establishment of clearer, environmentally-sound standards for all development within the W-0 zone district, such as a larger waterfront setback requirement, and the establishment of more detailed review guidelines related to environmental impacts of development proposals.

Numerous residents, boat slip owners, and business owners along the waterfront, including the Commodore and several members of the Capital Yacht Club, provided written comments and testified in opposition to specific aspects of the proposed zone district. Concerns were similar to those of ANC 6-D, including the potential application of the new zone designation to existing lands and businesses; the language of a proposed "grand-fathering" clause; the restriction on the number of floating homes within a marina; and restrictions on the use and location of a yacht club.

Proposed Rulemaking

Following the public hearing, the Commission took proposed action pursuant to 11 DCMR § 3027.2 at a special meeting on April 28, 2003. The Office of Planning and Corporation Counsel recommended a number of modifications to the proposed text, in response to concerns and issues raised by the Zoning Commission and members of the public at the Public Hearing, including minor wording modifications for clarification, reordering of sections, and to:

- incorporate a number of additional special exception review requirements;
- add PUD-type flexibility permitting Commission review of minor FAR, height, lot coverage, setback, and parking requirements;
- further increase the permitted percentage of floating homes within a marina from 35% to 50%;

- eliminate previously proposed size limits on yacht clubs, and slightly amend wording to provide for infrequent public functions and to permit temporary moorage of boats;
- amend parking requirements; and
- increase the required waterfront setback to seventy-five (75) feet, but permit a setback of between twenty (20) feet and seventy-five (75) feet by special exception.

The Zoning Commission further revised the proposed W-0 text by clarifying wording, eliminating redundant or unnecessary clauses, reordering clauses, and by:

- clarifying permitted and special exception uses with the W-0 zone district;
- applying waterfront setback requirements to parking areas as well as structures; and
- increasing the required waterfront setback to 100 feet, but permitting a setback of between twenty (20) feet and 100 feet by special exception.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 19, 2003, at 50 DCR 7838, for a 30-day notice and comment period.

In response to the notice, a written comment was received on October 15, 2003, from Lindsley Williams, 3307 Highland Place NW. Mr. Williams requested clarification regarding the Zoning Commission's jurisdiction to apply zoning over water past the high tide mark. He suggested changes to the text to permit floating commercial establishments in the W-0 zone district; to permit outright caretaker's residences of 750 square feet or less in the W-0 zone district; to clarify that a caretaker's residence is for the use of the caretaker of the premises itself; to propose minor unrelated clarifications to the C-M zone district; and to amend a numerical reference related to floating homes.

Written comments were also received from the Capital Yacht Club, dated October 20, 2003, expressing dissatisfaction with the proposed text because of the exclusion of floating homes from yacht clubs whereas floating homes may be allowed in a marina by special exception. Numerous specific changes to the proposed text were recommended in the letter.

The Office of Planning submitted a supplemental report dated November 17, 2003, recommending that all substantive proposed changes to the CR, W-1, W-2 and W-3 zones be eliminated from the final order, as they were not advertised. Other non-substantive wording clarifications were also recommended.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) in accordance with the provisions of § 492 of the District of Columbia Home Rule Act. NCPC reviewed this proposal at its meeting of November 6, 2003, and by report dated November 13, 2003, found that the text amendment would not negatively affect the federal interest, but recommended that the Zoning Commission amend § 917.4 (now § 917.5) to clarify that it does not apply to federally-owned property.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on December 8, 2003. In response to the above-mentioned supplemental report from the Office of Planning, the Commission agreed to eliminate amendments affecting the CR zone district and to make only technical amendments to the provisions of the W-1 through W-3 zone districts. The Commission also agreed with Mr. Williams' comment and voted to clarify § 921.1 to state that a caretaker's residence shall be "for a person employed on the premises." In addition, the following minor revisions were made:

- (1) the words "yacht club" were stricken from § 921.4 and
- (2) "caretaker's residence" was added to the table of special exception uses in § 3104.1.

The Commission also reviewed in detail other submission received in response to the Notice of Proposed Rulemaking, and made the following revisions to the W-0 final text:

- (1) the word "recreational" was removed from the definition for "yacht club" in § 199.1;
- (2) the words "located by" were replaced with "surrounded by" in §§ 917.4 (a) and (b);
- (3) reordering § 919.2;
- (4) the words "an approved" were replaced with the words "a permitted" and the words "or waived" were removed from § 919.3;
- (5) "floating home" was added as an accessory use within a yacht club in § 920, with the addition of provisions related to maximum density, home occupation with a floating home, and parking;
- (6) the words "or yacht club" were added in § 922.1, Additional Uses Subject to Special Exception, § (s) to permit a floating home within a yacht club, and in conformity with changes noted in (4) above, the words "an approved" were replaced with the words "a permitted";
- (7) the words "to the highest point of the building or structure, not including sailboat masts" were added in § 930.1;
- (8) the words "or yacht club" were added in the table in § 2101.1, Schedule of Requirements for Parking Spaces, to require one parking space for each floating home within a yacht club; and
- (9) the words "yacht club" were added in § 3202.3.

No other substantive changes were made. The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency and that no re-advertisement or re-publication of the proposed rule is required by virtue of the changes made.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1 (Zoning Regulations), 9 (Waterfront Districts), 20 (Non-conforming Uses and Structures), 21 (Off-Street Parking Requirements), 24 (Planned Unit Development Procedures), 25 (Miscellaneous Zoning Requirements), 31 (Board of Zoning Adjustment Rules of Practice and Procedure), and 32 (Administration and Enforcement) of the Zoning Regulations, Title 11 DCMR.

Added wording to existing provisions is underlined, and deleted wording is shown in ~~strike-through~~ lettering:

A. **Chapter 1, THE ZONING REGULATIONS**, is amended as follows:

1. Section 105.1 (g) is amended to read as follows:

105.1 For the purpose of this title, the District of Columbia shall be divided into the following zone districts:

(g) **WATERFRONT DISTRICTS**, as follows:

(1) **W** mixed uses, subdivided as follows:

- (A) **W-0** waterfront open space and recreation, low density;
- (B) **W-1** ~~low~~-moderate density;
- (C) **W-2** medium density; and
- (D) **W-3** high density;

2. Section 199.1 is amended as follows:

(a) By amending the definition of "Percentage of lot occupancy" to read as follows:

Percentage of lot occupancy - a figure that expresses that portion of a lot lying within lot lines and building lines that is occupied or that may be occupied under the provisions of this title as building area; except as provided in the Waterfront Districts wherein lot occupancy shall be calculated in accordance with § 932, and Mixed Use Districts wherein the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.

(b) By inserting the following new definitions in alphabetical order:

Boathouse - a building or structure designed and used to store and provide water access for non-motorized watercraft, including racing shells, kayaks, canoes, sailboats, rowboats, and similar boats.

Floating home - a sailboat, motorboat, or other floating structure that is designed and built to be used, or is modified to be used, as a waterborne residential dwelling, is dependent for utilities upon a utility linkage to a source originating on shore, and in which the tenant or owner sleeps overnight an average of fifteen (15) days per month.

Marina - the use of land, buildings, structures, and the surface of water for the provision of docking and storage facilities for boats.

Yacht Club - land, buildings, structures, and the surface of water for use by an incorporated club, for the purpose of boating, sailing, or yachting and in which the affairs of the organization are actually conducted and carried on by the members thereof.

B. Chapter 9, WATERFRONT DISTRICTS, is amended to read as follows:

1. Section 900, GENERAL PROVISIONS: WATERFRONT DISTRICTS is amended to read as follows:

900 GENERAL PROVISIONS: WATERFRONT DISTRICTS

900.1 The Waterfront (W) Districts are applied to waterfront areas that have one (1) or more of the following characteristics:

- (a) Geographically, historically, or locationally unique;
- (b) Adjacent to well-established residential areas;
- (c) Undergoing transition from light and heavy industrial uses to office and commercial uses; or
- (d) Where the public health, safety, general welfare, and amenity would be promoted and protected by the encouragement of mixed uses.

900.2 The Waterfront District shall be subdivided into W-0, W-1, W-2, and W-3 Districts.

900.3 The W-0 District permits open space, park, and low-density and low-height waterfront-oriented retail and arts uses, the W-1 District permits ~~only~~ a low moderate height and density, the W-2 District allows a medium height and density, and the W-3 District allows the greatest height and density of the Waterfront Districts.

900.4 The purpose of the Waterfront Districts is to encourage a diversity of compatible land uses at various densities, including combinations of residential, offices, retail, recreational, arts and cultural, and other miscellaneous uses.

900.5 The ~~Waterfront~~ W-1, W-2, and W-3 Districts are also intended to be relatively self-contained by supplying a variety of housing, service, employment, and recreational opportunities in one (1) location. This characteristic allows one (1)

area to serve many different needs of a single population and to thereby reduce the amount of vehicular traffic generated by the uses in the districts.

900.6 The W-0 District is intended to provide waterfront recreation areas with related waterfront-oriented or waterfront-enhancing uses, to serve local and regional open space recreation needs.

900.7 Except as provided in chapter 21 of this title, in the Waterfront Districts, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except as specified in §§ 901, 902, and 906 through 922.

2. Section **901, USES AS A MATTER OF RIGHT (W)**, is amended as follows:

(a) Subsection 901.1 is amended to read as follows:

(a) 901.1 The following uses shall be permitted in a ~~Waterfront~~ the W-1, W-2, and W-3 Districts as a matter of right.

(b) Subsections 901.2 through 901.4 are amended by striking the phrase "a Waterfront District" and replacing it with the phrase "the W-1, W-2, and W-3 Districts" wherever it appears.

(c) By adding a new § 901.5 to read as follows:

901.5 Within the W-0 District, the following uses shall be permitted as a matter of right:

- (a) Publicly-accessible park or open space, playground, or athletic field, including pedestrian and bicycle trails, necessary support facilities, and fitness circuits;
- (b) Boat construction on an occasional basis by a local community organization;
- (c) Community garden operated by a local community organization or District government agency;
- (d) Public nature education or interpretive center; and
- (e) Seasonal or occasional market for produce, arts, and crafts, with non-permanent structures.

3. Section **902, PROHIBITED USES (W)**, § 902.1 (l) is amended to read as follows:

(l) Parking lot, other than as permitted by special exception in the W-0 District in § 923;

4. Section **905, PLANNING OFFICE REVIEW (W)**, is amended to read as follows:

905 PLANNING OFFICE REVIEW (W)

905.1 Wherever §§ 906 through 923 require referral of an application to the D.C. Office of Planning for coordination, review, and report, the report shall ~~consider~~ reflect consideration of the following:

- (a) Whether the proposed use furthers the objectives of the Waterfront Districts;
- (b) The relationship of the proposed use to other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government;
- (c) The proposed site plan, including the relationship of different uses on the site;
- (d) The effect of the proposed site plan on neighboring properties and the waterfront shoreline (if applicable); and
- (e) Other issues deemed appropriate for report.

905.2 Whenever the Office of Planning refers an application to the D.C. Department of Transportation under §§ 906 through 916 923, the report shall ~~consider~~ reflect consideration of the following transportation and environmental matters:

- (a) Traffic to be generated;
- (b) Location and design of vehicular access and parking facilities;
- (c) Number of parking and loading facilities;
- (d) Treatment of public space;
- (e) Availability of sewer and water capacity;
- (f) Air quality;
- (g) Noise from commercial, industrial, and traffic sources; and
- (h) Other issues deemed appropriate for report.

5. Sections 906 through 912, 914, and 916 are amended as follows:

- (a) The titles of the section are amended so that the zone district designation "(W)" is replaced with "(W-1, W-2, and W-3)".
- (b) The phrase "shall be permitted as a special exception in a Waterfront district" is deleted wherever it appears and the phrase "shall be permitted as a special exception in the W-1, W-2, and W-3 Districts" is inserted in its place.

6. Sections 913 and 915 are amended as follows:

- (a) The titles of the section are amended so that the zone district designation "(W)" is replaced with "(W-1, W-2, and W-3)".

- (b) The phrase "shall be permitted as special exceptions in a Waterfront district" is deleted whenever it appears and the phrase "shall be permitted as special exceptions in the W-1, W-2, and W-3 Districts" is inserted in its place.

7. New §§ 917 through 926 are added to read as follows:

917 USES SUBJECT TO SPECIAL EXCEPTION (W-0) – GENERAL PROVISIONS

917.1 The uses described in §§ 918 through 922 are permitted if approved as special exceptions in the W-0 District.

917.2 Except as provided in § 917.3, applications for special exceptions within the W-0 District shall be heard by the Board of Zoning Adjustment.

917.3 As part of its consideration of a petition or application to zone a property or properties to the W-0 District, the Zoning Commission may also review special exceptions (whether authorized in this chapter or elsewhere in this Title) and variance requests for the subject properties simultaneously with the zoning map amendment application. The Commission's rules of procedure shall apply to such reviews.

917.4 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16) plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal at a meeting or hearing as a preliminary matter to hearing the application.

917.5 With respect to any special exception use under consideration, the Commission may authorize the following if the applicant is able to demonstrate that application of normally applied zoning regulations would result in an infeasible project and would hinder furtherance of the objectives of the Waterfront District:

- (a) An increase of not more than five percent (5%) in the maximum lot occupancy, height, or floor area ratio as otherwise prescribed in this Title. The Commission shall have the option to approve a greater increase if the subject property is surrounded by National Park Service lands; or
- (b) A reduction of not more than five percent (5%) of the minimum yard or court requirements as otherwise prescribed in this Title. The Commission shall have the option to approve a greater decrease if the subject property is surrounded by National Park Service lands.

918 BOATHOUSE (W-0)

918.1 If appropriate in furthering the objectives of the Waterfront District, a boathouse shall be permitted as a special exception in the W-0 District.

918.2 In addition to demonstrating that the boathouse meets the criteria for special exceptions set forth in §§ 924 and 3104 of this Title, the applicant shall further demonstrate that the boathouse and associated structures:

- (a) Will be designed to enhance the visual and recreational opportunities offered along the waterfront;
- (b) Will not result in the filling of normally submerged areas, and will minimize excavation to that reasonably required for a facility that is principally above-grade; and
- (c) Will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking.

918.3 One or more motorized safety launches for coaches are allowed for supervision of rowing practice and water safety.

918.4 A boathouse may include rest rooms, showers, locker rooms, kitchen, exercise area, boat storage and maintenance, coach's office, one caretaker's residence pursuant to § 921, rowing tank, dock, and related functions.

918.5 Off-street parking spaces shall be provided in the amount and manner specified in Chapter 21 – Off-Street Parking Requirements, except as may be permitted in accordance with the provisions of § 923.

919 MARINA (W-0)

919.1 If appropriate in furthering the objectives of the Waterfront District, a marina shall be permitted as a special exception in the W-0 District, provided that the applicant demonstrates the proposed use meets the special exception criteria set forth in §§ 924 and 3104 of this Title.

919.2 A marina may also include as accessory uses the following:

- (a) an office for the operation of the marina;
- (b) boat launching;
- (c) the sale of marine fuels;
- (d) minor repairs and maintenance to boats and marine engines;
- (e) the rental of boats; and
- (f) retail sales of supplies and services for small pleasure and commercial vessels.

919.3 Floating homes shall be permitted within a permitted marina provided that the maximum density of floating home berths shall not exceed fifty percent (50%) of

the total number of berths in the marina. This percentage may be increased by special exception, subject to the provisions of § 924.

919.4 A home occupation within a floating home, including a Bed and Breakfast, is permitted, subject to the provisions of §203.

919.5 Off-street parking spaces for a marina and each floating home permitted shall be provided in the amount and manner specified in Chapter 21 – Off Street Parking Requirements, except as may be permitted in accordance with the provisions of § 923.

920 YACHT CLUB (W-0)

920.1 If appropriate in furthering the objectives of the Waterfront District, a yacht club shall be permitted as a special exception in the W-0 District.

920.2 In addition to demonstrating that the yacht club meets the criteria for special exceptions set forth in §§ 924 and 3104 of this Title, the applicant shall further demonstrate that the yacht club and associated facilities:

- (a) Will be primarily for the use of the members of the yacht club, except that the yacht club may provide transient berths;
- (b) Will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking; and
- (c) Will not result in the filling of normally submerged areas and will minimize excavation to that reasonably required for a facility that is principally above-grade.

920.3 Floating homes shall be permitted within a permitted yacht club provided that the maximum density of floating home berths shall not exceed fifty percent (50%) of the total number of berths in the yacht club. This percentage may be increased by special exception, subject to the provisions of § 924.

920.4 A home occupation within a floating home, including a Bed and Breakfast, is permitted, subject to the provisions of § 203.

920.5 Off-street parking spaces for a yacht club and each floating home shall be provided in the amount and manner specified in Chapter 21 – Off-Street Parking Requirements, except as may be permitted in accordance with the provisions of § 923.

921 CARETAKER'S RESIDENCE (W-0)

921.1 A caretaker's residence, for a person employed on the premises, as an accessory use within a boathouse, marina, or yacht club in the W-0 District shall be permitted as a special exception.

- 921.2 In addition to demonstrating that the caretaker's residence meets the criteria for special exceptions set forth in §§ 924 and 3104 of this Title, the applicant shall further demonstrate that the residence is clearly secondary in design, location, and size to the principal use of the building.
- 921.3 The caretaker's residence shall be located within the principal building and exclusively for the use of the facility's caretaker and immediate family.
- 921.4 If the caretaker's residence is larger than 1,200 square feet, it shall occupy no more than 20% of the total area of the principal building.
- 921.5 One on-site parking space, in addition to other parking requirements, shall be provided.

922 ADDITIONAL SPECIAL EXCEPTION USES (W-0)

922.1 In addition to the uses set forth in §§ 918 through 921 of this Chapter, the following uses shall also be permitted as special exceptions in the W-0 District if appropriate in furthering the objectives of the Waterfront District; Provided that the applicant shall demonstrate that the proposed use meets the special exception criteria set forth in §§ 924 and 3104 of this Title:

- (a) Amusement enterprise;
- (b) Antique store;
- (c) Art gallery;
- (d) Art supply store;
- (e) Artist studio;
- (f) Auction house;
- (g) Bakery;
- (h) Bicycle sale, repair, or rental;
- (i) Boat accessory sales;
- (j) Boat repair, rental, or sales;
- (k) Boat launching facility, dock, wharf, or pier;
- (l) Book store;
- (m) Cabaret;
- (n) Camera / photo supplies;
- (o) Child care facility;
- (p) Cosmetic / toiletries sales;
- (q) Cruise line operation, including necessary associated dock and land facilities;

- (r) Fish monger;
- (s) Floating home, only within a permitted marina or yacht club and subject to the provisions of § 919.3;
- (t) Flower stand / florist;
- (u) Food / grocery store;
- (v) Gift shop;
- (w) Hobby shop;
- (x) Jewelry store;
- (y) Leather goods store;
- (z) Legitimate theater;
- (aa) Library, private or public;
- (bb) Mass transit facility;
- (cc) Museum;
- (dd) Music store, including the sale of musical instruments;
- (ee) Newsstand;
- (ff) Off-premises sale of beer and wine, with sale directly to consumers;
- (gg) Pet shop;
- (hh) Photo studio;
- (ii) Picture framing studio / shop;
- (jj) Place of worship;
- (kk) Private club other than a yacht club;
- (ll) Recreation building or use;
- (mm) Public parking - uncovered surface parking lot or underground structure only;
- (nn) Restaurant;
- (oo) Retail establishments;
- (pp) Sporting goods store;
- (qq) Stationery store;
- (rr) Swimming pool operated by a local community organization or District government agency;
- (ss) Temporary use of premises by fairs, circuses, or carnivals, upon compliance with the provisions of 19 DCMR Chapter 13, "Amusements and Recreation;"
- (tt) Ticket office;

- (uu) Water taxi information / ticket booth and passenger shelter; and
- (vv) Other maritime-related retail and service commercial uses.

923 PARKING SPACES (W-0)

923.1 Notwithstanding § 2116.1 of this Title, parking spaces for boathouses, marinas, yacht clubs, or other recreational uses to be located elsewhere than on the same lot or part of the lot on which the principal use is located, may be permitted as a special exception, if the applicant proves that compliance with this parking requirement would be unsafe or economically impractical and:

- (a) The parking spaces will be located to furnish reasonable and convenient parking for patrons of the principal building;
- (b) Any support facility in relation to the parking spaces is designed so as not likely to become objectionable to adjoining or nearby property, park space, or the waterfront because of noise, traffic, or other objectionable conditions;
- (c) The parking spaces will be adequately screened from adjacent park space and from the waterfront, and shall be designed to prevent storm water run-off directly into the river; and
- (d) All other requirements of Chapter 21 will be met.

923.2 The applicant shall prove that compliance would be unsafe or economically impractical by showing that one or more of the following applies:

- (a) The lack of street frontage or the separation of the use from any publicly-accessible street by public park space;
- (b) Unusual topography, grades, shape, size, or dimensions of the lot;
- (c) The lack of appropriate ingress or egress through existing or proposed streets;
- (d) Strip zoning or shallow zoning depth;
- (e) Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot; or
- (f) Traffic hazards caused by unusual street grades or other conditions.

923.3 All or a portion of required parking spaces for a boathouse may be reduced or eliminated by special exception if the applicant proves that:

- (a) The provision of parking would result in significant adverse impacts on adjacent park land;
- (b) The type or location of the associated principal use results in diminished need for parking from what would otherwise be required by zoning regulations; or

- (c) Reasonable and conveniently-located alternatives to the required parking exist and are available to the boathouse users with minimal impact on adjacent land or development.

924 SPECIAL EXCEPTION REVIEW CRITERIA (W-0)

924.1 In addition to proving that the proposed use meets all specific special exception criteria applicable to it as well as the general criteria set forth in § 3104, the applicant shall also demonstrate that:

- (a) The buildings, structures, and uses will enhance the visual and public recreational opportunities offered along the waterfront;
- (b) Buildings, structures, and uses on land will be located and designed to minimize adverse impacts on the river and riverbank areas;
- (c) If the proposed use is a boathouse, marina, or yacht club, the buildings will be located entirely on shore directly in front of berths, separated only by the setback area described in § 937, unless doing so would result in an infeasible project and would hinder furtherance of the objectives of the W-0 District;
- (d) Buildings, structures, and uses on, under, or over water will be located and designed to minimize adverse impacts on the river and riverbank areas;
- (e) All structures and buildings will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking, and so as not to limit public access along or to the waterfront, other than directly in front of the principal building or structure of a boathouse, marina, or yacht club;
- (f) Impervious surfaces will be minimized, and buildings, structures, and other uses will be designed and sited to minimize potential for surface storm water run-off directly into the river;
- (g) Screening, coping, setbacks, fences, the location of entrances and exits, or any other consideration for accessory or non-accessory parking spaces will be designed to screen and protect adjacent parkland and the waterfront; and
- (h) Emergency access will be provided to any buildings, structures, or other space devoted to active public use.

925 SPECIAL EXCEPTION APPLICATION REQUIREMENTS (W-0)

925.1 An applicant for a special exception shall provide a survey plan showing:

- (a) Existing vertical contours at two-foot intervals;
- (b) The 100-year floodplain and all existing streams, wetlands, and bodies of water, as well as general drainage patterns with arrows indicating the directions of major drainage flow;

- (c) Existing vegetation, including a listing of most abundant species; and
- (d) All existing disturbed areas, including the locations of utilities, paved areas, streets, culverts, storm water management systems, and bridges.

925.2 The applicant shall provide a proposed site plan showing:

- (a) The proposed location, height, bulk, and design of all improvements, including buildings, structures, pedestrian and vehicular access, parking, piers and wharves, berths, utilities, paved areas, culverts, storm water management, and bridges;
- (b) Suitable open space treatment of a waterfront setback area, as required in § 937, for uses such as walkway, bikeway, passive or active recreation; and including provisions assuring private maintenance of the space, convenient and public access to the space, and suitable connections to adjacent public space along the waterfront;
- (c) Proposed grading, including a calculation of the amount of cutting from and filling to natural grade;
- (d) Proposed landscaping, including riverbank treatment/restoration; and
- (e) The location and design of fencing, gates, screening, exterior lighting, and signage.

925.3 An applicant for a special exception shall provide a parking plan showing:

- (a) The location and design of parking spaces, access driveways, and other impervious surface landscaping;
- (b) The location and design of emergency vehicle access to all buildings, structures, and active public spaces; and
- (c) For boathouse, marina, and yacht club facilities, a parking management plan for special events (such as regattas).

925.4 An applicant for a special exception shall provide a description of activities proposed to be conducted at the site.

926 REFERRAL OF SPECIAL EXCEPTION APPLICATIONS (W-0)

926.1 Before commencement of a Public Hearing on an application for any special exception in the W-0 Zoning District, the Commission or Board shall refer the application to the D.C. Office of Planning for coordination, review, and report. The application shall include reports and recommendations from the Departments of Health and Transportation and all other appropriate agencies.

926.2 The report submitted by the Office of Planning shall specifically address the environmental impact of the proposed use, as that impact is identified by the Department of Health; provided that any such report is not intended to be, and

shall not be construed to constitute, the functional equivalent of an Environmental Impact Assessment or Statement.

8. Sections 930 through 934 are amended to read as follows:

930 HEIGHT OF BUILDINGS OR STRUCTURES (W)

930.1 Except as provided in this section, the height of buildings and structures shall not exceed the maximum height in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Feet)
W-0	40 feet
W-1	40 feet
W-2	60 feet
W-3	90 feet

Notwithstanding the above, the maximum height of a building or structure located on, in, or over the water within the W-0 District, including a floating home, shall be twenty-five (25) feet, measured from the mean high water level along the shore directly in front of the building or structure to the highest point of the building or structure, not including sailboat masts.

930.2 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes.

930.3 If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

- (a) It shall meet the requirements of § 411;
- (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and
- (c) It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in), height of the housing.

930.4 Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.

931 FLOOR AREA RATIO (W)

931.1 In the W-0 District, the floor area ratio of all buildings and structures shall not exceed five-tenths (0.5), provided that:

- (a) The floor area ratio on a lot used exclusively for recreational use, marina, yacht club, or boathouse buildings and structures shall not exceed 0.75; and
- (b) For the purposes of this sub-section, floor area ratio shall be the gross floor area of all buildings and structures located on land and any associated permanent structure located on, in, or over water, other than a floating home, divided by the total area of the lot.

931.2 In the W-1 District, the floor area ratio of all buildings and structures on a lot shall not exceed two and five-tenths (2.5), not more than one (1.0) of which may be used for other than residential purposes.

931.3 In the W-2 District, the floor area ratio of all buildings and structures on a lot shall not exceed four (4.0), not more than two (2.0) of which may be used for other than residential purposes.

931.4 In the W-3 District, the floor area ratio of all buildings and structures on a lot shall not exceed six (6.0), not more than five (5.0) of which may be used for other than residential purposes.

931.5 For the purposes of this section, "residential purposes" shall include dwellings, flats, multiple dwellings, rooming and boarding houses, community-based residential facilities, inns, and guestroom areas and service areas within hotels.

932 PERCENTAGE OF LOT OCCUPANCY (W)

932.1 No building or portion of a building devoted to residential use, including accessory buildings, shall occupy the lot upon which it is located in excess of the percentage of lot occupancy in the following table:

<u>ZONE DISTRICT</u>	<u>MAXIMUM PERCENTAGE OF LOT OCCUPANCY</u>
W-1	80%
W-2, W-3	75%

932.2 Within the W-0 District, no building or portion of a building, including accessory buildings, shall occupy greater than twenty-five percent (25%) of the lot upon which it is located, provided that:

- (a) The lot occupancy on a lot used exclusively for a recreational use, marina, yacht club, or boathouse buildings and structures shall not exceed fifty percent (50%) and

- (b) For the purposes of this sub-section, the lot occupancy shall be the total area occupied by all buildings and structures located on land and by any associated permanent structure located on, in, or over water, other than a floating home, divided by the total area of the lot.

932.3 For the purposes of this section, the percentage of lot occupancy in the W-1, W-2, and W-3 Districts may be calculated on a horizontal plane located at the lowest level where residential uses begin.

932.4 For the purposes of this section, the phrase "residential use" shall mean dwellings, flats, multiple dwellings, rooming houses, boarding houses, hospitals, and community-based residential facilities.

933 REAR YARDS (W)

933.1 A rear yard shall be provided for each residential building or structure, other than a floating home.

933.2 When a residential use begins at or below grade, the minimum depth of rear yard shall be three inches per foot (3 in./ft.) of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof, but not less than twelve feet (12 ft.).

933.3 When a residential use begins above grade, the minimum depth of rear yard shall be three inches per foot (3 in./ft.) of vertical distance from the horizontal plane upon which the residential use begins to the highest point of the main roof, but not less than twelve feet (12 ft.). The rear yard shall be provided at and above the residential plane.

933.4 For the purposes of this section, "residential building or structure" shall include those used as or intended to be used as dwellings, flats, multiple dwellings, rooming and boarding houses, hospitals, hotels, inns, and community-based residential facilities.

934 SIDE YARDS (W)

934.1 Within the W-0 District, for any building or structure located in whole or in part on land, the minimum width of each side yard shall be twelve (12) feet.

934.2 No side yard shall be required in a ~~Waterfront~~ the W-1, W-2, and W-3 Districts. If a side yard is provided, its minimum width shall be at least eight (8) feet.

9. A new § 937 is added to read as follows:

937 WATERFRONT SETBACK (W-0)

- 937.1 A setback inland from the bulkhead or the mean high water level, whichever provides the larger setback, of not less than one hundred feet (100 ft.) to any building or structure, shall be provided.
- 937.2 Notwithstanding § 937.1, a waterfront setback need not be provided for a water taxi ticketing / information booth, or for structures directly associated with a public-accessible wharf, dock, or pier.
- 937.3 A special exception may be granted in accordance with the criteria of §§ 924 and 3104, for any proposed waterfront setback of greater than twenty (20) feet and less than one hundred (100) feet.
- 937.4 Parking spaces, passenger drop-off areas, access to parking spaces, and access to loading areas shall not be located within the required waterfront setback area.

C. Chapter 20, NONCONFORMING USES AND STRUCTURES, § 2003.6, CHANGING USES WITHIN STRUCTURES, is amended to read as follows:

2003.6 For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:

- (a) W-0, R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E; . . .

D. Chapter 21, OFF-STREET PARKING REQUIREMENTS, is amended as follows:

1. The table included in § 2101.1, **SCHEDULE OF REQUIREMENTS FOR PARKING SPACES**, is amended by inserting the following after "Boat club or marina":

USES	NUMBER OF PARKING SPACES REQUIRED
<u>Marina:</u> <u>W-0</u>	<u>1 for each 4 berths or slips plus 1 for each floating home space within a marina or yacht club</u>
<u>Boathouse:</u> <u>W-0</u>	<u>1 space for every 2,000 square feet of gross building area</u>
<u>Yacht Club:</u> <u>W-0</u>	<u>The greater of 1 for each 4 berths or slips or 1 for each 800 square feet of clubhouse building area.</u>

2. Section 2116.1 is amended to read as follows:

2116.1 Except as provided in §§ 214, 510, 708, 730, 743.2(d), 753.1(c), 761.2, 803.1, 923, 2116.5, and 2117.9(c), all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.

3. Section **2119, BICYCLE PARKING SPACES**, is amended by adding new §§ 2119.10 and 2119.11, to read as follows:

2119.10 For a marina or yacht club within the W-0 District, one suitably designed and sited bicycle rack parking space shall be provided for each ten (10) berths or mooring spaces, in a location that is secure and convenient to the principal structure.

2119.11 For a boathouse within the W-0 District, one suitably designed and sited bicycle rack parking space shall be provided for each 2,000 gross square feet of gross building area, in a location that is secure and convenient to the principal structure.

- E. Chapter **22, OFF-STREET LOADING FACILITY REQUIREMENTS, § 2201, SCHEDULE OF REQUIREMENTS FOR PARKING SPACES**, is amended by inserting the following into the table included in § 2201.1:

Uses And Districts	Minimum Number And Size Of Loading Berths Required	Minimum Number And Size Of Loading Platforms Required	Minimum Number And Size Of Service / Delivery Loading Spaces Required
<u>Retail, service, or public assembly use in the W-0 District:</u>			
<u>With greater than 20,000 sq.ft. of gross floor area</u>	<u>1 @ 30 feet deep</u>	<u>1 @ 100 ft.²</u>	<u>1 @ 20 feet deep</u>

- F. Chapter **24, PLANNED UNIT DEVELOPMENT PROCEDURES**, is amended as follows:

1. Section 2401.1 is amended to read as follows:

2401.1 The minimum area included within the proposed development, including the area of public streets or alleys proposed to be closed, shall be as follows:

- (a) A total of two (2) acres for a development to be located in any R-1, R-2, R-3, R-4, or R-5-A District;
- (b) A total of one (1) acre for a development to be located in any W-0 or R-5-B District; or
- (c) A total of fifteen thousand square feet (15,000 ft.²) for development to be located in any other zone district.

2. Section **2405, DEVELOPMENT STANDARDS**, is amended as follows:

(a) Section 2405.1 is amended by modifying the first line of its table to read as follows:

ZONE DISTRICT	MAXIMUM HEIGHT (feet)
R-1-A, R-1-B, R-2, R-3, C-1, W-0	40

(b) Section 2405.2 is amended by adding the following at the end of its table:

FLOOR AREA RATIO (FAR)			
ZONE DISTRICT	RESIDENCE	COMMERCIAL, INCLUDING HOTELS AND MOTELS	TOTAL
W-0		0.5	0.5

G. Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS, § 2514.3, is amended to read as follows:

2514.3 For the purpose of interpreting this section, the zone districts established in this title are listed in the following groups of decreasing use restrictions:

- (a) W-0, R-1-A, R-1-B, R-2, and R-3 Districts;
- (b) R-4, R-5-A, R-5-B, R-5-C, R-5-D, R-5-E, and SP Districts;
- (c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD) Districts;
- (d) W-1, W-2, W-3, and CR Districts; and
- (e) C-M-1, C-M-2, C-M-3, and M Districts.

H. Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3104, SPECIAL EXCEPTIONS, is amended as follows:

1. Section 3104.1 is amended by making the following modifications to and insertions in its table:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Antenna for commercial TV or FM	Any R, SP, or CR District, or W-1, W-2, or W-3 Districts	§§ 211, 514, 617, and 914
Antenna, other than commercial	Any R, SP, or CR District, or W-1, W-2, or W-3 Districts	§§ 212, 515, 617, and 914
Boathouse	W-0 District	§ 918
Bowling alley	CR, C-1, and W-1, W-2, and W-3 Districts	§§ 609, 709, and 908
Building service trades,	CR, and W-1, W-2, and W-3	§§ 612 and 912

including plumber, electrician, exterminator, and air-conditioning mechanic	Districts	
Caretaker's Residence	W-0	§ 921
Community-based residential facility	Any R, SP, CR, C-1, <u>or C-2 District, W-1, W-2, or W-3 Districts</u>	§§ 218 - 221, 303 - 306, 335, 357 - 360, 513, 616, 711, 732, and 913
Electric substation	Any R, SP, <u>or CR District, W-1, W-2, or W-3 Districts</u>	§§ 207, 509, 608, and 907
Floating home	<u>W-0 District</u>	<u>§§ 919.3 and 920.3</u>
Hospital or clinic	<u>CR, or W-1, W-2, or W-3 Districts</u>	§§ 606 and 906
Light manufacturing, processing, fabricating, or milling	<u>CR, or W-1, W-2, or W-3 Districts</u>	§§ 610 and 909
Marina	<u>W-0 District</u>	<u>§ 919</u>
Miscellaneous uses	<u>CR and or W Districts</u>	<u>§§ 618, 915, and 922</u>
Natural gas regulator stations	Any R, SP, <u>or CR District, W-1, W-2, or W-3 Districts</u>	§§ 207, 509, 608, and 907
Parking spaces – location of accessory spaces	Any District	§§ 214, 510, 708, 730, 743.2(d), 751.1(c), 761.2, 803.1, 824, <u>923.1</u> , and 2116.5 – 2116.9
<u>Parking spaces – reduction or elimination for boathouses</u>	<u>W-0 District</u>	<u>§ 923.3</u>
Public utility pumping stations	Any R, SP, CR, <u>or C District, W-1, W-2, or W-3 Districts</u>	§§ 207, 509, 608, 707, 728, 743.2(b), 753.1, 761.2, and 907
<u>Retail, service, arts and cultural uses as specified</u>	<u>W-0 District</u>	<u>§ 922</u>
School - private school or trade school	<u>W-1, W-2, or W-3 Districts</u>	§ 912
Telephone exchange	R-4, R-5, SP, CR, <u>and W-1, W-2, and W-3 Districts</u>	§§ 332.1(b), 509, 608, and 907
Warehouse use	<u>CR, and W-1, W-2, and W-3 Districts</u>	§§ 611 and 910
Wholesaler use	<u>CR, and W-1, W-2, and W-3 Districts</u>	§§ 611 and 910

<u>Yacht club</u>	<u>W-0 District</u>	<u>§ 920</u>
-------------------	---------------------	--------------

2. Section 3104.4 is amended by modifying the first line of its table to read as follows:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
College, university, or other academic institution of higher learning	Any R, SP, <u>or CR District</u> , or <u>W-1, W-2, or W-3 Districts</u>	§§ 210, 507, 615, and 916

I. **Chapter 32, ADMINISTRATION AND ENFORCEMENT**, § 3202.3 is amended to read as follows:

3202.3 Except as provided in the building lot control regulations for Residence Districts in § 2516 and § 5 of An Act to amend an Act of Congress approved March 2, 1893, entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Code, 2001 Ed. § 9-101.05 (formerly codified at D.C. Code § 7-114 (1995 Repl.))), a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Notwithstanding the foregoing, a building permit may be issued for a boathouse, yacht club, or marina to be constructed on a lot that is not a lot of record, provided that such lot fronts on a public body of water, is otherwise surrounded by public park land, and is zoned W-0. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

Vote of the Zoning Commission taken at its public meeting on April 28, 2003, to **APPROVE** the proposed rulemaking: **5-0-0** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and James H. Hannaham in favor, and Peter G. May also in favor by absentee ballot to approve).

This order was **ADOPTED** by the Zoning Commission at its public meeting on December 8, 2003, by a vote of **4-0-1** (Carol J. Mitten, Peter G. May, Anthony J. Hood, and John G. Parsons to adopt; James H. Hannaham not present and not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on _____.